No. 80-1211

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In the Supreme Court of the United States

OCTOBER TERM, 1980

GENERAL PORTLAND CEMENT COMPANY, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES

WADE H. MCCREE, JR.
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MEMORANDUM FOR THE UNITED STATES

This federal income tax case involves the determination of petitioner's "gross income from mining" under Section 613(a) and (c)(1) of the Internal Revenue Code of 1954 (26 U.S.C.) (Pet. 3) for 1960-1968, as computed in accordance with the proportionate profits method set forth in the Treasury Regulations (Pet. App. 2b). Under that method, gross income from mining is determined by apportioning gross sales receipts of the integrated mining-manufacturer's first marketable product (here cement) between mining and total income in the ratio that the producer's mining costs bear to its total (mining plus nonmining) costs.

The questions presented are: (1) whether the amount of gross sales receipts to be allocated in accordance with the costs ratio is to be computed on the assumption that only cement sold in bulk is petitioner's first marketable product, as petitioner contends, or on the assumption in accordance with the governing Treasury Regulations that cement, whether sold in bulk or in bags, constitutes petitioner's first

marketable product, as the court below held; and (2) whether, in determining the ratio of mining costs to total costs, the costs of bags, bagging, loading of cement in rail cars, barges and trucks, and owning and operating distribution terminals are to be included in the proportionate profits computation as nonmining costs, as the Treasury Regulations prescribe. As petitioner recognizes (Pet. 9), these issues are now pending before the Court in *Commissioner* v. *Portland Cement Co. of Utah*, No. 79-1907 (argued Jan. 13, 1981). Accordingly, the Court should hold this case and dispose of it in accordance with the decision in No. 79-1907.

Respectfully submitted.

WADE H. MCCREE, JR.
Solicitor General

FEBRUARY 1981

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